



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

ISCR Case No. 17-01791

Applicant for Security Clearance

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel

For Applicant: *Pro se*

06/21/2018

Decision

GOLDSTEIN, Jennifer, Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations. His ongoing history of indebtedness and failure to timely pay Federal income tax obligations remain a concern. National security eligibility for access to classified information is denied.

Statement of the Case

On August 10, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR in writing (Answer) on September 26, 2017, and requested a hearing before an administrative judge. The case was assigned to me on November 15, 2017. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on December 13, 2017. I convened the hearing as scheduled on January 8, 2018. The Government offered Government Exhibits (GE) 1 through 5, which were admitted without objection. Applicant testified on his own behalf and presented Applicant Exhibits (AE) A through D, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on January 12, 2018. The record was left open for the receipt of additional evidence until January 29, 2018. On January 28, 2018, AE E through AE K, were submitted and received without objection. The record closed as scheduled on January 29, 2018.

Findings of Fact

Applicant admitted SOR allegations 1.a through 1.f, with explanations. After a thorough and careful review of the testimony, pleadings, and exhibits, I make the following findings of fact:

Applicant is 36 years old, and is married. He has no children. He is a high school graduate. He has worked for his employer, a government contractor, since January 2016. (GE 1; Tr. 20.)

Applicant attributes his financial delinquencies to a series of events beyond his control. He lost his home to foreclosure in 2010, due to the nationwide recession. His work hours were reduced during that time, and he did not have sufficient funds to make ends meet. He relied on credit cards to pay his living expenses. Additionally, he experienced two periods of unemployment: from April 2014 to September 2014, and from February 2015 to January 2016. His wife was also unemployed from April 2014 to January 2016. (Tr. 22-26.)

Applicant was alleged to be indebted to a bank on a judgment filed against him in 2011, in the amount of \$5,034, as stated in SOR subparagraph 1.a. Applicant was also alleged to be indebted to the same underlying creditor in the amount of \$7,034, as stated in SOR subparagraph 1.e. These are the same debt. He testified that this debt was possibly for a delinquent credit card. He inquired about the status of this judgment with the clerk of court and was told the judgment remained "open." It no longer appears on his most recent credit report, but he never paid this debt. It is unresolved. (GE 3; Tr. 26-31.)

Applicant was alleged to be indebted to the Federal government on a tax lien filed in 2015, in the amount of \$25,639, as stated in SOR subparagraph 1.b. He explained the tax lien was a result of:

not having the right deduction out of our paychecks because of cost of living in the [area omitted] is outrageous, and we were trying to live, so we had to try to adjust the amounts so that we could pay for all the things we had, and unfortunately, at the end of the year, it was too much for us to pay them, so

we would try to set up a payment. We would start paying, but it would never go down. So then the next year would come and it would be the same situation 'cause we were - - we would change it a little bit so that we could pay the payments every month, but it just kept stacking and stacking up. (Tr. 40-41.)

The lien covered delinquent Federal taxes from tax years 2009 through 2012. He made payments via installment agreements with the Internal Revenue Service (IRS) several times including: from approximately June 2012 to August 2014, and from June 2015 to February 2016, but those agreements ceased due to nonpayment. In August 2017, he hired a lawyer to negotiate a payment plan that he can afford to resolve this obligation. He pays the law firm approximately \$460 per month for their services, on a total contract price of \$6,500. No payment agreement with the IRS had been documented by the close of the record. The law firm filed an application for the withdrawal of tax lien on October 12, 2017. The documentation does not establish whether that application was approved. Applicant's Federal tax debt remains unresolved. (GE 2; GE 4; AE B; AE G; Tr. 21, 40-49, 62.)

Applicant was alleged to be indebted on a collection account in the amount of \$331, as stated in SOR subparagraph 1.c. This debt became delinquent in May 2014. It was for a utility bill from a previous residence. Applicant paid this debt in August 2017. (GE 3; GE 5; AE A; AE C; A D; Tr. 31-32.)

Applicant was alleged to be indebted on a collection account in the amount of \$315, as stated in SOR subparagraph 1.d. This debt became delinquent in August 2013. It was paid for less than the full balance, as reflected on Applicant's September 22, 2017 credit report. (GE 5; AE A; AE C; AE D; Tr. 32-34.)

Applicant was alleged to be indebted on a collection account in the amount of \$4,287, as stated in SOR subparagraph 1.f. Applicant testified that this debt was related to a repossessed automobile. It became delinquent in June 2010. After receiving the SOR, Applicant contacted this creditor, but was unable to reach a payment agreement. It is unresolved. (GE 3; Tr. 37-40.)

His credit report dated October 20, 2017, reflects one additional delinquent debt in the amount of \$2,289. Applicant testified that the creditor has been unwilling to accept payments. (GE 5; Tr. 59-60.)

Applicant has not attended financial counseling recently. He claims he and his wife now live within their means and have "learned our lesson." (Tr. 52-53.) He relocated to a less expensive city where there is a lower cost of living. He utilizes a budget to plan for his recurring expenses. (Tr. 52-59.)

Applicant presented letters of support from his wife and three close friends. They all attest to Applicant's trustworthiness and dedication to his job. (AE H; AE I; AE J; and AE K.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Finally, Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F: Financial Considerations

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so;
- (c) a history of not meeting financial obligations; and
- (f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant has a history of not meeting his financial obligations. He failed to timely pay his Federal income tax obligations from 2009 to 2012, which resulted in a \$25,639 tax lien that was filed against him in 2015. He also had four¹ unresolved delinquent debts that became delinquent between 2010 and 2014, which total \$9,967. There is sufficient evidence to raise substantial security concerns under the above disqualifying conditions.

¹ SOR subparagraphs 1.a and 1.e allege the same underlying debt, and as a result will be counted as one debt.

The guideline also includes conditions that could mitigate security concerns arising from Applicant's financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and
- (g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant's history of financial delinquencies is demonstrated by his current and old unresolved debts. He admitted he failed to timely pay his Federal income tax obligations. He resolved two small consumer accounts, but two other debts remain unaddressed, despite no longer appearing on his credit report. While he plans to resolve his Federal tax debt with the help of a law firm, he does not yet have an accepted payment agreement. He has no plan to resolve his remaining consumer debts. His debt is ongoing and casts doubt on his reliability and judgment. AG ¶ 20(a) does not apply.

Applicant attributed his financial problems to a series of events, including underemployment, unemployment, and the nationwide economic downturn. These were conditions beyond his control. However, the record lacks documentation to show he reasonably and responsibly addressed his delinquencies while they were accumulating. He did not have the funds available to make payments on his consumer debts, so he ignored them until they fell off his credit report. While he did negotiate past installment

agreements with the IRS, he failed to responsibly fulfill those agreements. Full mitigation under AG ¶ 20(b) is not established.

Applicant provided documentation that he has contracted with a law firm to attempt to resolve his Federal tax lien. They provided him guidance on how to best manage and resolve the tax lien. However because no payments have been documented to the IRS, there is insufficient evidence to conclude that his Federal tax delinquency is under control. With respect to his consumer debts, Applicant resolved two debts in good faith. There is no evidence that he is making a good-faith effort to repay his remaining creditors. The evidence does not establish full mitigation under AG ¶¶ 20(c) or 20(d) concerning his overall financial situation.

Applicant did not dispute any of the debts alleged in the SOR. AG ¶ 20(e) does not apply.

Applicant testified that the law firm will make arrangements on his behalf to pay the IRS for his delinquent income tax debts. However, he has no repayment plan currently in effect. His Federal tax debt is unresolved. He did not fully mitigate the Government's concern under AG ¶ 20(g).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is respected by his wife and friends and is considered trustworthy. His financial problems occurred largely due to factors beyond his control, including two significantly long periods of unemployment. He has taken efforts to avoid incurring delinquent debt in the future like relocating to an area with a lower cost of living. However, he has been unable to recover

from the turmoil that his and his wife's unemployment caused in his financial life. While he has hired a law firm to help him with his Federal tax debt and has paid two small debts, he has not established a track record of responsibly managing and resolving delinquent debts or repairing his credit. Applicant has not provided sufficient evidence about his overall financial stability from which to determine that further tax problems or financial delinquencies are unlikely. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline F.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a:	Against Applicant
Subparagraphs 1.b:	Against Applicant
Subparagraphs 1.c:	For Applicant
Subparagraphs 1.d:	For Applicant
Subparagraphs 1.e:	For Applicant
Subparagraphs 1.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. National security eligibility is denied.

Jennifer I. Goldstein
Administrative Judge